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IN THE

Supreme Court of the United States

OCTOBER TERM 1944

No. 145

THE CITY OF WINTER HAVEN, a municipal corporation, et al.,

Petitioners,

versus

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

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ADDITIONAL STATEMENT

The opinion filed here November 8, 1943 (**Meredith v. Winter Haven,** No. 42, ... U. S. ....., 64 S. Ct. 7), evidences a comprehensive grasp of the case presented and of the contentions made. No elaborate re-statement appears necessary.

However, certain basic facts should be kept constantly in mind:

1. The 1933 refunding bonds were issued to refund 30 separate issues of outstanding bonds.

2. The old bonds were payable at definite dates and were non-callable .

3. Most of them were unmatured and many of them would not yet have matured.

4. The City was unable to pay the principal and interest on the old bonds as it matured.

5. The creditors were somehow induced to exchange their outstanding bonds for the 1933 refunding bonds.

6. The 1933 refunding bonds did not increase either the principal or the rate of interest.

7. Since the City could not pay the outstanding obligations as they were maturing, it was provided that only a portion of the interest on the refunding bonds for the first ten years after their issuance should be currently payable and should be evidenced by semi-annually maturing coupons, such currently maturing coupon interest being payable according to the following schedule:

3½	per cent from April 1, 1933 to April 1, 1935—	2 years
4	per cent from April 1, 1935 to April 1, 1936—	1 year
4½	per cent from April 1, 1936 to April 1, 1937—	1 year
5	per cent from April 1, 1937 to April 1, 1943—	6 years
		10 years

8. Payment of the differential between the amount of interest called for by the old bonds and the currently maturing coupon rate on the new bonds for this first 10-year period was deferred until the maturity of the refunding bonds and for convenience it was referred to in the bond contract papers as deferred interest.

9. The refunding bonds mature serially, April 1, 1948 to April 1, 1963. It is thus seen that the earliest maturing bonds do not become due until long after the original rate of interest comes into effect as a current obligation of the bonds.

10. Since the refunding bonds were made callable, it was provided that if they should be called before maturity the bond holder would not lose all of the deferred interest but should recoup a portion of it, that is:

(a) If the bonds were called during the 10-year period during which the reduced currently maturing coupon rate was in effect, 1933 to 1943, the bondholder would be paid the full principal of the bonds, accrued interest at the currently maturing coupon rate, and one half of the deferred interest for the 10-year period in which the low currently maturing coupon rate was in effect;

(b) If the bonds were called during the second 10-year period, 1943 to 1953, the bondholder was to be paid the full principal of the bonds, accrued interest at the currently maturing coupon rate, and three-fourths of the deferred interest for the 10-year period.

(c) If the bonds were called during the third 10-year period, 1953 to 1963, the bondholder was to be paid the full principal of the bonds, accrued interest at the currently maturing coupon rate, and the full deferred interest for the 10-year period.

11. Section 20 of the resolution of the City Commission authorizing the 1933 refunding bonds provides:

> "That if any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforcible by any Court of final jurisdiction, it shall not affect or invalidate any remainder thereof, and if any of the bonds hereby authorized be adjudged illegal or unenforcible in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment."

12. The refunding bonds held by the respondents are listed by number, amount and maturity date, at page 94 of the Record. By checking these numbers against the schedule of exchanges set out in Section 17 of the resolution authorizing the refunding bonds, at page 82 of the Record, it is a simple matter to identify the maturity dates of the bonds surrendered in exchange for them, and to determine the amount the respondents would be entitled to be paid, under Section 20 of the resolution, on call of their bonds, if the deferred interest provisions of the refunding bonds be held illegal or unenforcible.

13. The 1933 refunding bonds were validated in the Courts of Florida, in statutory bond validation proceedings, at the instigation of the City, under statutes providing that the validation decrees are forever conclusive and that thereafter the validity of the bonds shall never be brought in question in any court.

14. The City attempted to call the 1933 refunding bonds, for redemption on October 1, 1941, without providing for the payment of any part of the deferred interest, it being stated in the notice that "no interest will be paid on said bonds after the redemption date."

15. The present respondents (plaintiffs in the District Court) filed a Complaint, which was later amended, seeking a declaratory judgment as to the amount the City would have to pay, upon calling the bonds in advance of their maturity, with appropriate injunctive relief.

Petitioners assert that none of the issues raised by the Complaint and by the Amendment to the Complaint were decided by the Circuit Court of Appeals. But that position is untenable, as will readily be seen by comparing the allegations and prayers of the Complaint and Amendment with the opinion of the Circuit Court of Appeals, **Meredith v. Winter Haven, 141 Fed. (2nd) 348, 141 Fed. (2nd) 1019.** It is clear that the real matter in controversy, as to which a declaratory judgment is sought, is how much the City of Winter Haven owes its bondholders upon calling their bonds before maturity. And that is the question decided by the Circuit Court of Appeals.

ARGUMENT

The petition does not show that the decision of the Circuit Court of Appeals is in conflict with applicable local decisions, or that there is any other special or important reason for granting a review.

I.

It is first contended by petitioners that the Circuit Court of Appeals did not decide whether the City's attempt to call the bonds, upon paying only the principal, plus the currently maturing coupon interest, without paying deferred interest as called for in the bond contract, was valid, or, as petitioners state it, "whether the call for redemption of the bonds was valid under the law of Florida."

We fail to see how anyone can read the opinion prepared for the Court by Judge Sibley, and concurred in by all the judges participating, and remain in any doubt whatever that the attempted call was held invalid.

The opinion contains a careful analysis of the Florida decisions bearing upon the question and evidences a genuine effort to decide the point as the Supreme Court of Florida would have decided it.

That the Circuit Court of Appeals reached the same conclusion that the Florida Supreme Court would have reached is indicated by the decision of the latter court in the recent case of **State v. City of Lakeland, ... Fla. ....., 16 So. (2nd) 924.**

The old bonds of the City of Lakeland bore interest at rates varying from 5 per cent to 6 per cent.

The refunding bonds were to be dated July 1, 1943, and bear interest at 3 per cent per annum for the first year, 4 per cent per annum for the next four years, and 3 per cent per annum thereafter.

The refunding bonds maturing July 1, 1960 and thereafter were made callable July 1, 1959 and thereafter, at par and accrued interest, plus an additional one year's interest of 2½ per cent, if redeemed on July 1, 1959, with the additional interest being reduced at the rate of ¼ of 1 per cent per annum in 1960 and succeeding years until the year 1969 is reached. Refunding bonds remaining outstanding in 1969 may be redeemed in 1969 and thereafter, without the payment of additional interest.

The opinion states:

> "We are unable to say that the inclusion of such a provision, as a part of a comprehensive plan for the retirement of the indebtedness and at considerable interest savings to the taxpayers, requires the approval of the freeholder electorate before it may be adopted."

Judge Sibley was careful to point out that the provision for redemption of the Winter Haven refunding bonds was likewise part of a comprehensive plan for the retirement of the indebtedness, that "the new bonds eased the pressure **without increasing the principal or** the rate of **interest",*** that "the call provisions were for the benefit of the City, as the Florida Court declares it will judicially notice," and that

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* **Emphasis has been supplied in some of the quotations in this brief.**

"even after paying the consideration" for the right to redeem "there is profit in the present call."

The petitioners seem to be contending that, merely because the Circuit Court of Appeals found "no settled constitutional law in Florida which would condemn these bonds as refunding bonds, or which would invalidate the postponement of payment of part of the old interest rate by the plan of deferred coupon," the Circuit Court of Appeals was itself bound to condemn them, so far as the provision for payment of deferred interest on call is concerned, and thus to invalidate the postponement of payment of part of the old interest rate.

They also seek to throw doubt upon the soundness of the decision of the Circuit Court of Appeals, because of the fact that the opinion states that "we do not see how" the provision for payment of part of the deferred interest upon call of the bonds can be severed from the call provision "so as to sustain the call before maturity without paying part of the deferred interest," and that "we are not sure that the **Andrews case** * requires us to hold otherwise."

Certainly the Court was not sure that the **Andrews case** so requried, for it was a "made case" and "the parties were co-operating to secure a decision in the City's favor," and "it is much weakened as authority, because the cause of complaint presented there differs much from that in this case. Andrews sued on a contract of the City with himself and others as refunding agents to bring about the refunding, which was made several months before the refunding resolution of July 24, 1933, involved here as a part of the present bondholders' contract. Andrews did not bring that resolution into his case at all. * * * Andrews contributed to his defeat by resting his case on this agency contract. In the case before us we know of the agency contract only through the **Andrews case,** and it appears to be separate from the refunding resolution. If invalid, it ought not to affect these bonds. If this expense was in some way taken out of bond money, it possibly ought to be restored, but this does not appear."

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* Andrews v. Winter Haven, 148 Fla. 144, 3 So. (2nd) 805.

Since the **Andrews case** did not deal with the refunding resolution at all, and since the petitioners were unable to cite any Florida decisions throwing doubt upon the validity of the provisions of Section 20 of the resolution, the Circuit Court of Appeals was correct in deciding that

> "If the **Andrews case** requires us to hold that the part of the call provision which requires one-half the deferred interest to be paid is separable and unenforceable, then the bonds are 'adjudged illegal and unenforceable * * * in part,' and the holders are 'entitled to assume the position of holders of a like amount of the indebtedness provided to be refunded and as such enforce their claim for payment'."

There can be no basis for the professed apprehension of the petitioners that the District Court will be in doubt as to what has been decided, for the opinion plainly states that this "will sustain a claim not exceeding the amount that would be due on an old bond at its rate of interest up to the date of call, less interest payments made," and that while "the interest due on an old bond would be more than is here claimed, because under the new bonds only one-half the deferred interest is payable, and nearly all would have been earned in October, 1941," "the claim ought not to be enlarged."

II.

The petitioners next observe that the Circuit Court of Appeals found "no settled constitutional law in Florida" that would permit the City to call the bonds on or before April 1, 1943, without paying any portion of the deferred interest.

The opinion states that, aside from the **Andrews case,** which the Court pointed out did not involve the refunding bonds, or the resolution authorizing them, but only the contract between the City and its refunding agents, "we find no settled constitutional law in Florida **which would condemn these bonds as not being refunding bonds, or which would invalidate the postponement of payment of part of the old interest rate by the plan of deferred interest coupons,** because on the whole the time of payment of principal and interest has merely been enlarged **without increasing the burden of the debt."**

The Court was not sure that the **Andrews case** controls this one, for the reasons stated in the opinion, but decided that, if the **Andrews case** requires a holding that the part of the call provision which requires one-half the deferred interest to be paid is separable and unenforceable, then the bonds are "adjudged illegal and unenforceable * * * in part", and the holders are "entitled to assume the position of holders of a like amount of the indebtedness provided to be refunded and as such enforce their claim for payment."

Petitioners have cited no Florida case, and we believe none can be found, which indicates that the decision so reached is contrary to Florida law or is other than what the Florida court would have announced if the question had been presented to it.

In **Jefferson County v. Hawkins, Trustee, 23 Fla. 223, 2 So. 362,** the Supreme Court of Florida considered a case where the County had issued certain bonds, referred to for convenience as "blue bonds." Later, the County without legislative authorization issued refunding bonds, in lieu of the "blue bonds," for the principal of the bonds and for the matured interest. The new or refunding bonds were referred to as "white bonds." The Court held that the "white bonds" were void, but that when the County took up the "blue bonds" with the "white bonds," **that did not extinguish the debt, but the debt remained until paid.** It was further held that **the County was obligated to pay interest on the principal of the "blue bonds" at the contract rate,** and to pay interest on the matured "blue bond" interest coupons, from their maturity, at the legal rate of interest.

In the case of **State ex rel. Gillespie v. Walthal, 124 Fla. 866, 169 So. 552,** decided July 21, 1936, the Florida Supreme Court, speaking of the identical issue of Winter Haven 1933 refunding bonds involved in the instant case, emphasized the fact that, on the strength of the validation decree, **procured by the City,** the original bonds had been exchanged for the refunding bonds and surrendered to the City, and the Supreme Court of Florida held that the refunding bonds "therefore **were**, at least **valid extensions** pro tanto of the original obligations."

III.

Petitioners assert that the decision is in conflict with the holdings in **Outman v. Cone, 141 Fla. 196, 192 So. 611, Taylor v. Williams, 142 Fla. 402, 195 So. 175, State v. Special Tax School Dist. No. 3 of Pinellas County, 143 Fla. 557, 197 So. 127,** and **State v. City of New Smyrna Beach, 148 Fla. 482, 4 So. (2nd) 660,** as well as the ruling in **Andrews v. Winter Haven.**

This position seems to be rendered untenable by the fact that in none of those cases did the Court consider such a provision as that contained in Section 20 of the Winter Haven resolution.

The case of **Outman v. Cone, 141 Fla. 196, 192 So. 611,** involved the right to call bonds under a provision authorizing their call, at that particular time, without payment of any "deferred interest," if the money made available to pay the bonds was obtained from sources other than the sale of new refunding bonds. If, however, the money to call the bonds was raised by selling new refunding bonds, a portion of the deferred interest was to be paid.* The Court stated that it was "apprised of no good reason for the difference" in amounts to be paid, depending on the source of payment.

The Court either **found** or **assumed** the fact to be that payment of the deferred interest as provided in the bonds and authorizing resolution, when added to the expense of refunding, would make the bonds more burdensome than the original bonds, and, therefore, in conflict with **Article IX, Section 6,** of the **Florida Constitution.**

In the case of Taylor v. Williams, 142 Fla. 402, 195 So. 175, the Florida Court again either **found** or **assumed** the fact to be that the provisions of the bonds under consideration would increase the burden of the taxpayers, in violation of **Article IX, Section 6.**

But, as pointed out in the opinion of the Circuit Court of Appeals, the Winter Haven refunding bonds "eased the pressure **without increasing the principal or the rate of interest,**" and "**there is profit** (to the City) **in the present call.**"

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* **Such ambiguous provision is not contained in the bonds involved in this case.**

The case of **State v. Special Tax School Dist. No. 3 of Pinellas County, 143 Fla. 557, 197 So. 127,** was decided June 28, 1940. It was a proceeding to validate a new issue of refunding bonds. The opinion points out that the bonds proposed to be refunded provide that they may be called "on or prior to October 1, 1942, at par and accrued interest at the rate then prevailing as enforcible and collectible" (apparently without payment of deferred interest), that they are being called under this provision, and that there is no occasion for enforcing the deferred interest coupons **if the outstanding bonds are called prior to October 1, 1942.**

It was therefore quite proper for the Circuit Court of Appeals, in denying the petition for rehearing in the **Winter Haven case**, to observe that in the **Pinellas County case,** the court held that the deferred interest coupons would not thereafter be collectible, "but the reason given is not that they were originally and totally void, but that the bonds which bore them had been duly called under a provision for calling them 'at par and the accrued interest at the rate then prevailing as enforcible and collectible'."

The case of **State v. City of New Smyrna Beach, 148 Fla. 482, 4 So. (2nd) 660,** was a statutory proceeding to validate a proposed new issue of refunding bonds. Just how it could possibly adjudicate anything as to the obligation of the City to pay deferred interest on an old issue of refunding bonds that were already outstanding is difficult to understand. It was expressly held in **State v. Hillsborough County, 113 Fla. 345, 151 So. 712,** that such questions cannot be decided in a proceeding to which the holders of the outstanding bonds are not parties. At any rate, the Florida Court, in the **New Smyrna Beach case,** did not say anything which purported to extend the **principles of law** recognized and defined in the **Outman and Taylor cases.**

The latest Florida decision dealing with a provision for payment of interest upon call of refunding bonds, at a rate exceeding that which had accrued as enforcible and collectible, without approval of the freeholder electorate, was rendered in the case of **State v. City of Lakeland, ... Fla. ....., 16 So. (2nd) 924,** where the inclusion of such a provision, without freeholder approval, was sustained.

But, regardless of what decision might have been reached if Section 20 had not been included in the Winter Haven resolution, the fact remains that none of the cases relied upon by petitioners involved a situation such as is presented in Section 20, and there being no Florida decisions indicating that Section 20 was in anywise invalid, the Court of Appeals was entirely within its province in declaring it effective.

The Court was certainly correct in its statement that "in the case before us we know of the agency contract only through the **Andrews case**, and it appears to be separate from the refunding resolution" adopted several months later and "involved here as a part of the present bondholders' contract."

Exhibit E, which begins at page 109 of the Record, is simply a transcript of the proceedings in the **Andrews case,** and shows that that case was decided on the basis of the agency contract, attached as Exhibit "A" to the bill of complaint in the **Andrews case** (see transcript page 119), whereas the present case seeks a judgment decaratory of the rights of the bondholders whose securities were issued pursuant to the resolution adopted by the City Commission several months later, quite apart from any agreement which the City may have made with its refunding agents.

Since the resopndents here are not claiming under the agency contract, there seems to be no occasion for citing such cases as **McMullen v. Hoffman, 174 U.S. 639, 43 L. Ed. 1117,** and **Hall v. Coppell, 7 Wall. 542.**

Under Florida law, the respondents' bond contract is not affected, one way or the other, by any contracts the City may have made with its refunding agents.

State v. City of Fort Myers
145 Fla. 135, 198 So. 814.
State v. Sarasota County
118 Fla. 629, 159 So. 797.

CONCLUSION

The final contention of the petitioners seems to be that the decision of the Circuit Court of Appeals is erroneous because of the fact that the opinion states that the right held to exist on the part of the bondholders "is a contract right, and both just and equitable."

If this proceeding had been brought in the courts of Florida, the contract rights of the parties would have had to be decided there according to the principles of equity and justice, in the absence of a contrary provision in the constitution or statutes, and in the absence of a controlling judicial precedent requiring some other basis of decision.

Surely, the judgment is not to be overthrown because it comports with equity and justice, there being no state law requiring a contrary holding.

Respectfully submitted,

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